

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN ANTHONY HENRY,

No. C 13-00913 SBA (PR)

Petitioner,

v.

**ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS; AND DENYING  
CERTIFICATE OF APPEALABILITY**

AMY MILLER, Warden,

Respondent.

Petitioner, a state prisoner, filed this pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application for leave to proceed in forma pauperis (IFP). Petitioner has filed a previous petition for a writ of habeas corpus with this Court, challenging the same conviction and sentence. See Case No. C 98-03590 SBA (PR). The Court denied the first petition on the merits.

Thereafter, Petitioner filed an appeal in the Ninth Circuit Court of Appeals. See Ninth Circuit Case No. 98-17407. On June 2, 2000, the Ninth Circuit affirmed this Court's order denying the habeas petition. On October 20, 2000, the Ninth Circuit issued the mandate.

Petitioner then filed a writ of certiorari in the United States Supreme Court. See United States Supreme Court Case No. 02-5007. On October 7, 2002, the Supreme Court denied Petitioner's writ of certiorari.

On February 28, 2013, Petitioner filed the instant petition.

Respondent has moved to dismiss the petition as successive under 28 U.S.C. § 2244(b). (Docket No. 8.)

For the reasons discussed below, the Court grants Respondent's motion to dismiss.

**DISCUSSION**

The Court finds the present petition is a second or successive petition attacking the same conviction and sentence as Petitioner's prior federal habeas petition. A second or successive petition containing new claims may not be filed in the district court unless Petitioner first obtains from the United States Court of Appeals an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not done so. Consequently, the instant petition must be classified as a successive petition. Petitioner has not presented an order from the Ninth Circuit

1 authorizing this Court to consider any new claims. See id. Accordingly, Respondent's motion to  
2 dismiss (Docket No. 4) is GRANTED, and this petition is DISMISSED without prejudice to filing a  
3 new habeas action if Petitioner obtains the necessary order.

4 **CONCLUSION**

5 For the foregoing reasons, Respondent's motion to dismiss the petition as successive (Docket  
6 No. 4) is GRANTED. The instant petition is DISMISSED as a successive petition pursuant to  
7 § 2244(b).

8 No certificate of appealability is warranted in this case. See Rule 11(a) of the Rules  
9 Governing § 2254 Cases, 28 U.S.C. foll. § 2254 (requiring district court to rule on certificate of  
10 appealability in same order that denies petition). Petitioner has not shown "that jurists of reason  
11 would find it debatable whether the petition states a valid claim of the denial of a constitutional right  
12 and that jurists of reason would find it debatable whether the district court was correct in its  
13 procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

14 The Clerk of the Court shall enter judgment in accordance with this Order, terminate all  
15 other pending motions as moot, including Petitioner's motion for an extension of time to file an  
16 opposition (Docket No. 5), and close the file.

17 This Order terminates Docket Nos. 4 and 5.

18 IT IS SO ORDERED.

19 DATED: 8/26/2013

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge